

**SHB 1402 - H AMD 139**

By Representative Condotta

NOT ADOPTED 3/11/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. Sec. 1. A new section is added to chapter 51.52  
4 RCW to read as follows:

5 (1)(a) Except as provided in (b), (c) and (d) of this  
6 subsection, after the filing of a notice of appeal under RCW  
7 51.52.060(2) and confirmation of witnesses pursuant to the rules of  
8 the board, the department and its representatives and the employer  
9 and its representatives shall not have contact to discuss the facts  
10 or issues in question in the appeal with any medical provider who  
11 has examined or treated the worker at the request of the worker or  
12 treating medical provider and has been confirmed as a witness by the  
13 worker or the worker's representative, unless written authorization  
14 for contact is given by the worker or the worker's representative.  
15 Written authorization is only valid if given after the date of the  
16 worker's witness confirmation and expires ninety days after it is  
17 signed.

18 (b) Contact is permitted as necessary for the ongoing management  
19 of the claim, including but not limited to communication regarding  
20 the worker's treatment needs and the provider's treatment plan,  
21 vocational and return-to-work issues and assistance, and  
22 certification of the worker's inability to work, unless these issues  
23 are in question in the appeal.

24 (c) If the department and its representatives or the employer  
25 and its representatives wish to communicate with the examining or  
26 treating medical providers concerning the issues in question in the  
27 appeal and no written authorization from the worker or the worker's

1 representative has been obtained, after the worker's confirmation of  
2 witnesses the communication must either be:

3 (i) In writing including by e-mail, sent contemporaneously to  
4 all parties with a notice to the provider in bold type that any  
5 response must be in writing, including by e-mail;

6 (ii) In person, by telephone, or videoconference, at a date and  
7 time mutually agreed to by all parties, with the worker or the  
8 worker's representative given the opportunity to fully participate;

9 or

10 (iii) Pursuant to a properly scheduled and noted deposition.

11 (d) Written authorization is not required if the worker fails to  
12 confirm the examining or treating medical provider as a witness as  
13 required by the board.

14 (2)(a) Except as provided in (b) and (c) of this subsection,  
15 after the filing of a notice of appeal under RCW 51.52.060(2) and  
16 confirmation of witnesses pursuant to rules of the board, the worker  
17 and the worker's representative, if any, shall not have contact to  
18 discuss the facts or issues in question in the appeal with any  
19 medical provider who has examined the worker at the request of the  
20 employer or the employer's representative and has been confirmed as  
21 a witness by the employer or the employer's representative, unless  
22 written authorization for contact is given by the employer or the  
23 employer's representative. Written authorization is only valid if  
24 given after the date of the employer's witness confirmation and  
25 expires ninety days after it is signed.

26 (b) If the worker or the worker's representative wishes to  
27 communicate with a medical provider who has examined the worker at  
28 the request of the employer and no written authorization from the  
29 employer or the employer's representative has been obtained, the  
30 communication must either be:

31 (i) In writing, including by e-mail, sent contemporaneously to  
32 all parties with a notice to the provider in bold type that any  
33 response must be in writing, including by e-mail;

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1 (ii) In person, by telephone, or videoconference, at a date and  
2 time mutually agreed to by all parties, with the department,  
3 employer, and their representatives given the opportunity to fully  
4 participate; or

5 (iii) Pursuant to a properly scheduled and noted deposition.

6 (c) Written authorization is not required if the employer fails  
7 to confirm the examining medical provider as a witness as required  
8 by the board.

9 (3)(a) Except as provided in (b) and (c) of this subsection,  
10 after the filing of a notice of appeal under RCW 51.52.060(2) and  
11 confirmation of witnesses pursuant to the rules of the board, the  
12 worker and worker's representative, if any, shall not have contact  
13 to discuss the facts or issues in question in the appeal with any  
14 medical provider who has examined the worker at the request of the  
15 department and has been confirmed as a witness by the department or  
16 employer unless written authorization for contact is given by the  
17 department or its representative or, in the event that the  
18 department is not participating in the appeal, by the employer or  
19 its representative. Written authorization is only valid if given  
20 after the date of the department's witness confirmation or, if the  
21 department is not participating in the appeal, the employer's  
22 witness confirmation, and expires ninety days after it is signed.

23 (b) If the worker or the worker's representative wishes to  
24 communicate with a medical provider who has examined the worker at  
25 the request of the department, and no written authorization has been  
26 obtained from the department or the department's representative or,  
27 if the department is not participating in the appeal, the employer  
28 or the employer's representative, the communication must either be:

29 (i) In writing, including by e-mail, sent contemporaneously to  
30 all parties with a notice to the provider in bold type that any  
31 response must be in writing, including by e-mail;

32 (ii) In person, by telephone, or videoconference, at a date and  
33 time mutually agreed to by all parties, with the department,  
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1 employer, and their representatives given the opportunity to fully  
2 participate; or

3 (iii) Pursuant to a properly scheduled and noted deposition.

4 (c) Written authorization is not required if the department or  
5 employer fails to confirm the examining medical provider as a  
6 witness as required by the board.

7 (4) The board may determine whether the parties have made  
8 themselves reasonably available to participate in telephone or  
9 videoconference communications as provided in subsections  
10 (1)(c)(ii), (2)(b)(ii) and (3)(b)(ii) of this section.

11 (5) This section only applies to issues set forth in a notice of  
12 appeal under RCW 51.52.060(2).

13 (6) This section does not limit the reporting requirements under  
14 RCW 51.04.050 and 51.36.060 for issues not set forth in a notice of  
15 appeal.

16 (7) The department and the board may adopt rules as necessary to  
17 implement the provisions of this section.

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19 NEW SECTION. Sec. 2. This act applies to orders entered on or  
20 after the effective date of this section."

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**EFFECT:** Provides that the restrictions on contact with medical providers apply at the same stage of the proceedings for employers, the Department, and workers. Provides that the restrictions apply when witnesses are confirmed and that any written authorization for contact must be given after witnesses are confirmed.

Provides that the Board of Industrial Insurance Appeals, rather than the assigned judge, decides whether the parties have made themselves reasonably available and deletes the grant of authority to the judge to determine remedies, including sanctions.

J-1

Restores language in the original bill requiring any written notice to medical providers to be in bold type rather than "distinct."

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